

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION**

ROBERT LEE FREEMAN,

Plaintiff,

vs.

DEBRAH A. HICKEY; Dr. LIBERO;
and TOM ELLIS,

Defendants.

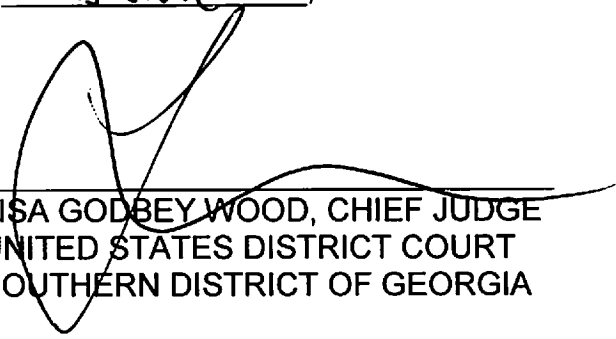
CIVIL ACTION NO.: CV210-051

ORDER

After an independent and *de novo* review of the record, the undersigned concurs with the Magistrate Judge's Report and Recommendation, to which Objections have been filed. In his Objections, Plaintiff reasserts the allegations in his complaint, and newly asserts that he was told by Dr. Chippi that if he was treated when he first tested positive for H. Pylori that he could have been cured. However, this new claim is not supported by the evidence Plaintiff submitted with his original complaint, which states, "once an individual tests positive for the H. Pylori antibody, they will generally remain positive for the remainder of their life." (Doc. No. 1-1, p. 16). As noted in the Magistrate Judge's Report, Plaintiff was not treated for an active H. Pylori infection in 2008 because he did not exhibit symptoms of an infection at that time. (Doc. No. 12, p. 2; Doc No. 1-1, pp. 15-16). A positive indication of the presence of H. Pylori is not an

indication of an active infection. (Doc. No. 1-1, p. 16). Plaintiff's disagreement with the medical opinion from prison staff is not sufficient to support an Eighth Amendment claim. Plaintiff's Objections are without merit and are **OVERRULED**. The Report and Recommendation of the Magistrate Judge is adopted as the opinion of the Court. Plaintiff's Complaint is **DISMISSED** for failure to state a claim upon which relief may be granted. The Clerk is authorized and directed to enter the appropriate Judgment.

SO ORDERED, this 29 day of June, 2010.



LISA GODBEY WOOD, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA